SBCivil Writ Petition No.1645/1996

Hemraj
vs.
State of Rajasthan & Anr.

Date of Order :: 10th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. B.L.Tiwari, Dy. Government Advocate.

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A writ in the nature of certiorari is sought by the petitioner to quash the judgment dated 29.5.1995 passed by Board of Revenue for Rajasthan, Ajmer in Reference/TA No.24/95/Bikaner and the order dated 9.1.1996 passed by Board of Revenue rejecting the application submitted by the petitioner to review the judgment dated 29.5.1995.

In short the controversy involved in this petition is that in pursuant to a judgment and decree dated 19.10.1982 passed by Assistant Colonisation Commissioner, Kolayat the petitioner was declared and entered as gair khatedar tenant of the lands in khasra No.85 and 347 village Bhikampur District Bikaner.

The Assistant Commissioner, Colonisation, by judgment dated 19.10.1982 while accepting the suit preferred by the petitioner under Sections 88, 89, 92-A and 188 of the Land Revenue Act, 1956 (hereinafter referred to as “the Act of 1956”) held that the land

in dispute was in possession of father of the petitioner plaintiff since samvat year 2015 and, therefore, the plaintiff petitioner is entitled for a decree to enter him as a gair khatedar tenant.

The Collector-cum-Deputy Commissioner, Colonisation, Bikaner under an order dated 9.1.1995 made a reference under Section 232 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Act of 1955") to the Board of Revenue for Rajasthan, Ajmer to examine validity of the judgment dated 19.10.1982 in pursuant to which gair khatedari rights were accorded to the petitioner.

The Board of Revenue by judgment impugned dated 29.5.1995 accepted the reference by holding that the plaintiff petitioner was not having any right to be declared as gair khatedar tenant being not in possession of the land in dispute. The Board of Revenue also held that the fact about possession over the land was not substantiated by any evidence including the statement of former jagirdar of village Bhikampur.

The petitioner sought review of the judgment dated 29.5.1995 by way of filing a review petition before the Board of Revenue under Section 229 of the Act of 1956 but that too was rejected by order dated 9.1.1996. Hence this petition for writ is preferred by

the petitioner under Articles 226 and 227 of the Constitution of India.

Counsel for the petitioner, at the threshold of hearing, stated that the petitioner acquired gair khatedari rights as a consequence of a decree passed by the competent court in the year 1982 which was sought to be referred by the Collector under Section 232 of the Act of 1955 in the year 1995 i.e. after a lapse of about 13 years. According to counsel for the petitioner no such reference is permissible at a belated stage. To substantiate the contention reliance is placed upon a Division Bench judgment of this Court in the case of State of Rajasthan v. Teja & Ors., reported in 2005(1) DNJ (Raj.) 162, wherein this Court held that powers under Section 232 of the Act of 1955 are required to be exercised within a reasonable period as unreasonable delay would amount to putting imprimatur of the Courts on the unreasonable and arbitrary exercise of powers. In the case of State of Rajasthan v. Teja & Ors. (supra) Hon'ble Division held as under:-

> “In Anandi Lal's case (supra), the Division Bench has taken note of the fact that once a tenant/khatedar acquires tenancy/khatedari rights and continues to be in possession of the land, his rights cannot be called in question after unreasonable delay. Such tenants/khatedars are required to be treated at par, for all purposes, with all other

> tenants/khatedars, who acquired the tenants/khatedari rights over the land. It was further observed that to permit the exercise of revisional powers u/s.82 of the act of 1956 and/or u/s.232 of the Act of 1955 after unreasonable delay would amount to putting imprimatur of the Courts on the unreasonable and arbitrary exercise of power. The Court took the practical view of the matter observing that within a period of one year, the tenant/khatedar of the land would have spent money for the improvement of the land, he would have arranged his affairs of life on the basis that he is in occupation of the land, he would have entered into several transactions on that basis and made many commitments. In para 25, it is observed that such a power can be exercised even after one year in exceptional cases. Thus, such power can be exercised even after one year not simply in a case of illegality in transaction or fraud simplicitor but where the illegality or fraud is alleged and further it is shown that on account of collusion between the public officers and the private party, the public interest has suffered. Further, this aspect is required to be explained by the revisional authority invoking such power. Thus, such powers cannot be invoked for ipse dixit reasons."

In the present case gair khatedari rights accrued in favour of the petitioner as a consequence of judgment and decree dated 19.10.1982 and the reference was made in the year 1995 i.e. after a lapse of more than 12 years. There is no allegation with

regard to fraud or collusion between the public officers and the private party while granting the gair khatedari rights. It is also pertinent to note that the Board of Revenue held that the Assistant Commissioner, Colonisation, was having no authority to grant gair khatedari rights to the petitioner and on that count declared the judgment dated 19.10.1982 bad in eye of law. The Board of Revenue considered the matter as if the Assistant Commissioner Colonisation was granting gair khatedari rights to the petitioner on an application. The Board of Revenue failed to appreciate that gair khatedari rights were granted to the petitioner by accepting the suit preferred by him by accepting his ancestral possession over the land in dispute.

In view of whatever discussed above I am of the considered opinion that the respondents exercised powers under Section 232 of the Act of 1955 at a belated stage, the petitioner has not acquired gair khatedari rights by fraud or collusion between the public officers and private parties, therefore, the Board of Revenue erred while accepting the reference made to it under the order dated 9.1.1995 passed by Deputy Commissioner, Colonisation, Bikaner.

Accordingly, this petition for writ is allowed. The judgment impugned 29.5.1995 passed by Board of Revenue is quashed. The order passed by the

Board of Revenue dated 9.1.1996 refusing to entertain review petition also stands quashed as the original judgment dated 29.5.1995 has already been quashed as above. The order passed by the Assistant Commissioner, Colonisation, Kolayat dated 19.10.1982 consequently stands restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.